

No. 9(1)81-8 Lab/7465.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Alfadeal Chemicals Industrial Estate, Sector-6, Faridabad.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 311 of 1979

between

SHRI M.K. KOHLI WORKMAN AND THE MANAGEMENT OF M/S ALFADEAL CHEMICALS INDUSTRIAL ESTATE, SECTOR-6, FARIDABAD

Present—

Shri Adarsh Kishore, for the workman.

Shri R.C. Sharma, for the management.

AWARD

By order No. FD/62-79/42547, dated 26th September, 1979, the Governor of Haryana referred the following dispute between the management of M/s Alfadeal Chemicals Industrial Estate, Sector-6, Faridabad and its workman Shri M.K. Kohli, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri M.K. Kohli was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 8th January, 1980 :—

- (1) Whether the workman left his services of his own ?
- (2) Whether there had been any settlement before the Conciliation Officer ? If so to what effect ?
- (3) Whether the workman committed misconduct ? If so to what effect ?
- (4) Whether Shri M.K. Kohli is a workman ?
- (5) Whether the performance of Shri Kohli was not satisfactory ? If so to what effect ?
- (6) Whether Shri Kohli has reached the age of superannuation ? If so, to what effect ?
- (7) Whether the management is a Shop covered under the Shops Act ? If so, with what effect ?
- (8) Whether the management has been hit by losses, fall in business and price rise ? If so to what effect ?
- (9) Whether the termination of the workman was justified and in order ?
- (10) Relief.

And the case was fixed for the evidence of the parties. The workman examined himself as WW-1 on issue No. 1. The management examined Shri T.S. Minhas partner as MW-1 and closed its case. The workman examined on other issues as WW-1 and Sarvjit Singh as WW-2 and closed his case. Arguments were heard. Now I give my finding issues-wise :—

Issue No. 4.—WW-1 stated that he was a Salesman drawing Rs 350 per month. His duty was to deliver goods of the management outside the factory and deliver bills and receive cheques, payment orders and do another connected business of the management. He produced documents Ex. W-1 to W-16.

MW-1 stated that Shri M.K. Kohli was working as a Sales Officer and a letter copy Ex. M-1 was received from the Labour Officer Ballabgarh alongwith complaint Ex. M-2 from Shri M.K. Kohli. He also produced Ex. M-5 and stated that full authority had been given to Shri Kohli in respect of his work. He used to settle rates with the parties. He produced Ex. M-6 to M-12 bills showing that he had settled different rates from different parties. Most of the sales of the company were on credit. Shri Kohli had authority to reduce rates at the time of calculation of payment. Shri Kohli did not go alongwith the goods because for that purpose there was a separate man. In cross examination he stated that there was no separate sales department before the appointment of Shri Kohli. There was no other Sales Officer. He admitted that Ex. W-1 and W-2 were delivery challan of the company.

Ex. M-2 is a complaint made to the Labour Inspector Ballabgarh in which Shri Kohli has shown himself as a Sales Officer. There is another document Ex. M-27 which is copy of application under section 33-C(2) of the I.D. Act from Shri Kohli in which he has shown himself as Sales representative. I have also gone through bills and challans which are in the hand of Shri Kohli and it is a proved fact that he had charged different rates from the different parties for the same goods and also received less payments than shown in the original bills. The workman is defined in section 2(S) of the I.D. Act which means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, etc. It does not include any such person "who is employed mainly in a managerial or administrative capacity or who being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature. The management has nowhere shown that he was employed purely in a managerial, administrative capacity. He was drawing only Rs 270 as wages and doing other duty for the management for collection of payments and settling accounts for the management. It leads me to the conclusion that he was only a Sales Representative though he had mentioned himself as a Sales Officer in Ex. M-2, therefore, this issue is decided against the management.

Issue No. 7.—MW-1 stated that in the factory there were only four persons in the previous year whereas there were only three persons during this year. It was registered under the Shops Act and certificate of registration was Ex. M-18. Ex. M-18 is registration certificate on form F under section 13 of the Punjab Shops and Commercial Establishment Act, 1958 for the year 1979-80. Number of employees shown in column six is four. I, therefore, hold that it is registered under Punjab Shops and Commercial Establishment Act, 1958.

Issue No. 1.—MW-1 stated that the workman on 26th April, 1979 submitted leave application Ex. M-4. He pick up a quarrel with him in the evening and went away. He again came on 27th April, 1979 and went after about half an hour. WW-1 stated that he did not leave service of his own. Before the Labour Inspector on complaint Ex. M-2 it was decided that the management will take him on duty and, therefore, he went on 26th April, 1979. The management paid him salary on that day. He made an application for leave which was Ex. M-4 as there was marriage of his daughter. After the marriage he again went

to the management but they neither paid him arrear of salary, nor allowed him duty, therefore, he made demand notice with the Conciliation Officer. The management has failed to prove this issue. The workman did not leave his service of his own.

Issue No. 2.—No settlement was produced by the management, therefore, this issue is decided against the management.

Issues No. 3, 5, 6 and 8.—These issues were not pressed by the management, therefore, these issues are decided against the management.

Issue No. 9.—There is no evidence to show that the workman was charge-sheeted for some misconduct. The version of the management that his work was found unsatisfactory is without any basis. I have held above that the workman did not leave the services of the management of his own, rather I find that he was not allowed duty when he returned after marriage of his daughter. I find the termination of the services of the workman as unjustified, therefore, decide this issue against the management.

Issue No. 10.—The argument of the learned representative for the management that the establishment has only three persons on its rolls and under the Shops and Commercial Establishment Act no reinstatement could be ordered. He cited FJR Vol. 57 page 206 judgement of the Punjab and Haryana High Court in Nawanshahr Central Cooperative Bank Ltd., *Versus* Labour Court Jullundur. In this case a reinstatement order passed by the Labour Court Jullundur was set aside by the Hon'ble Judge and it was held as under :—

“The question arises as to whether respondent No. 2 is entitled to reinstatement from the date when his services were terminated as the petitioner did not comply with the provisions of section 22(i) of the Act. Sub-section (2) of that section provides that in any case instituted for a contravention of provisions of sub-section (i), if a Magistrate is satisfied that an employee has been removed without reasonable cause the Magistrate shall for reasons to be recorded in writing, award compensation to the employee equivalent to two month's salary. From a reading of the sub-section it is evident that in case of non-compliance with the provisions of sub-section (1), the employee becomes entitled to a compensation equivalent to two month's salary. He is not entitled to reinstatement on that ground. Thus, respondent No. 2 is not entitled to be reinstated from the date of termination of his services in view of section 22(1) of the Punjab Shops and Commercial Establishments Act, 1958. The findings of the Labour Court in this regard are not correct and are liable to be set aside. If respondent No. 2 wants to recover compensation under sub-section (2) of section 22 he should proceed under the aforesaid Act wherein procedure for recovery of compensation has been provided.”

As discussed above, I give my award that the workman is not entitled to reinstatement but shall be entitled to two month's wages as notice pay only. I order accordingly.

Dated the 23rd June, 1981.

M.C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 619, dated 27th June, 1981

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.